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Connell Foley LLP
85 Livingston Avenue
Roseland, NJ 07068
P 973.535.0500 F 973.535.9217

Timothy E. Corrison
Partner
TCorrison@connellfoley.com

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VIA EMAIL

Juan M. Fajardo
Assistant Regional Counsel
U.S. Environmental Protection Agency – Region 2
Fajardo.Juan@epa.gov

Re: Offer of Cash Out Settlement
The Diamond Alkali Superfund Site
Lower 8.3 Miles of Lower Passaic River Study Area
Essex and Hudson Counties, New Jersey
Notice of Potential Liability Under 41 USC §9607(a)

Dear Asst. Regional Counsel Fajardo:

We have been asked to seek clarification regarding several issues pertaining to the proposed settlement with Harrison Supply Company ("Harrison Supply"). Accordingly, please advise as follows:

1. The Administrative Settlement Agreement and Order on Consent for Remedial for Remedial Design with Occidental Chemical Corporation ("Occidental Settlement Agreement") includes a section identifying the prior Administrative Orders on Consent and Consent Judgments (collectively "Consents") entered into with various parties. More specifically, Section IV EPA's Findings of Fact, paragraph numbers 15, 19, 23, 24, 25, 28, and 31. For each of the referenced Consents please advise as follows:

- (a) Was a Covenant Not to Sue provided?
- (b) Was the Covenant Not to Sue conditioned upon completion of actions required under the settlement so as to resolve liability?
- (c) Was the Covenant Not to Sue immediately effective so as to immediately resolve liability?
- (d) Have the required actions been completed?
- (e) Have any of the Consents been terminated for non-compliance?

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- (f) Are the settlements reached with the parties to the Consents subject to the contribution protections provided in the pending settlement so as to bar those parties from bringing contribution actions against Harrison Supply under Section 113(f) for the monies expended in conjunction with the performance of the required actions in the Consents?

2. The Occidental Settlement Agreement provides an explicit agreement by Occidental to not assert any claims under Sections 107(a) or 113 of CERCLA that they may have for all matters related to OU2 against de micromis, de minimis and Ability-To-Pay Parties. Please advise as follows:

- (a) Does the presently pending settlement offer to Harrison Supply and the other parties fall within the above provision?
- (b) If not, can the Occidental Settlement Agreement be amended to provide the same?
- (c) Will the EPA agree to include similar protections for Harrison Supply in any future settlements relating to OU2?

Thank you.

Very truly yours,



Timothy E. Corrison

TEC/mms